

RECORD OF DECISION

Environmental Impact Statement for the Eagle Butte West Coal Lease Application WYW155132



Casper Field Office



October 2007

MISSION STATEMENT

It is the mission of the Bureau of Land Management to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations.

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**U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
RECORD OF DECISION
EAGLE BUTTE WEST LEASE BY APPLICATION
WYW155132
CAMPBELL COUNTY, WYOMING**

INTRODUCTION

On December 28, 2001, the operator of the Eagle Butte Mine filed an application with the BLM for Federal coal reserves in a tract located west of and immediately adjacent to the mine in Campbell County, Wyoming, approximately three miles north of the city of Gillette (Appendix 1 - Figure 1). The application was made pursuant to the Leasing on Application regulations found in the Code of Federal Regulations (CFR) at 43 CFR Subpart 3425. In the application, the tract was referred to as the Eagle Butte Mine West Extension Lease By Application (LBA) Tract. BLM assigned case file number WYW155132 to the application and renamed it the Eagle Butte West LBA Tract.

The operator of the Eagle Butte Mine when the application was filed was RAG Coal West, Inc. In August 2004, RAG finalized the sale of the Eagle Butte Mine to Foundation Coal West, Inc. (FCW), a directly held subsidiary of Foundation Coal Holdings, Inc.

The Federal coal reserves were applied for as a maintenance tract for the Eagle Butte Mine. A maintenance tract is a tract of Federal coal that is adjacent to, and can be mined by, an existing active coal mine. As applied for, the Eagle Butte West LBA Tract includes a total of approximately 1,397.64 acres (Appendix 1 - Figure 2). FCW estimates that, as applied for, the tract includes approximately 238 million tons of mineable Federal coal reserves in Campbell County, Wyoming.

The Proposed Action analyzed in the Eagle Butte West Coal Lease Application Environmental Impact Statement (EIS) is to hold a competitive sealed-bid lease sale and issue a lease for the tract as applied for. According to the applicant, the Eagle Butte Mine needs the Federal coal included in the Eagle Butte West coal lease area in order to extend the life of the mine. The applicant would recover the Federal coal using the same methodology, machinery, and facilities that are currently being used to recover the coal in the existing Eagle Butte Mine coal leases. FCW anticipates that, if they acquire a lease for the Eagle Butte West LBA Tract, it would take approximately nine years to recover the Federal coal included in the tract.

The Eagle Butte Mine has a permit approved by the Wyoming Department of Environmental Quality Land Quality Division (WDEQ/LQD) and a Mineral Leasing Act (MLA) mining plan approved by the Secretary of the Interior to conduct surface coal mining operations on their existing coal leases. The mine also has an air quality permit approved by the Air Quality Division of the Wyoming Department of Environmental Quality (WDEQ/AQD) which allows mining of up to 35 million tons of coal per year through the year 2008.

BACKGROUND

The Lease By Application Process

In the Powder River Basin (PRB), maintenance tracts are nominated for leasing by companies with adjacent existing mines. To process an LBA the BLM must evaluate the quantity, quality, maximum economic recovery (MER) and fair market value (FMV) of the Federal coal. The BLM must also evaluate the environmental and socioeconomic impacts of leasing and mining the Federal coal in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA). BLM prepared the *Eagle Butte West Coal Lease Application Environmental Impact Statement* to evaluate the impacts of leasing the Federal coal included in the Eagle Butte West coal lease application. Leasing the Eagle Butte West LBA Tract would not authorize the lessee to begin mining operations on the tract, but the EIS evaluates the potential impacts of mining the Eagle Butte West LBA Tract because mining is a logical consequence of issuing a lease for a maintenance tract.

The Office of Surface Mining Reclamation and Enforcement (OSM) is a cooperating agency on the EIS because OSM is the Federal agency which administers programs that regulate surface coal mining in accordance with the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The Wyoming State Planning Office (WSPO), WDEQ/LQD, WDEQ/AQD, Wyoming Department of Transportation (WYDOT), and the Campbell County Board of Commissioners are also cooperating agencies on this EIS. WSPO coordinates planning within State agencies and facilitates collaboration among the agencies, the Federal government, other states, the private sector, and the general public. WDEQ has entered into a cooperative agreement with the Secretary of the Interior to regulate surface coal mining operations on Federal and non-Federal lands within the State of Wyoming. WYDOT's responsibilities include planning and supervising road improvement work, maintaining roads, and supporting airports and aviation in Wyoming. The responsibilities of the Campbell County Board of Commissioners include, but are not limited to, management and oversight of county roads and facilities and planning and zoning rules in the county.

By law and regulation the LBA process is an open, public, and competitive leasing process; bidding is not restricted to the applicant. FCW filed the Eagle Butte West coal lease application because the area applied for is adjacent to their existing approved mining operations at the Eagle Butte Mine and the Federal coal can be mined using their existing mine facilities, equipment and employees. As shown in Appendix 1 - Figure 1, none of the other existing surface coal mines in the PRB are immediately adjacent to the Eagle Butte West LBA Tract. In the *Eagle Butte West Coal Lease Application EIS*, the alternatives analyzed in detail assume that the applicant will be the successful bidder if a competitive sale is held.

Recent Coal Leasing Activity in the Wyoming Powder River Basin

Since decertification of the Powder River Federal Coal Region in 1990, seventeen (17) Federal coal leases in Campbell and Converse counties, Wyoming, have been issued after competitive sealed-bid sales using the LBA process. These leases include approximately 44,400 acres and 5.184 billion tons of mineable coal (see Table 1-1, *Eagle Butte West Coal Lease Application EIS*). Sixteen of the new leases were issued to the following existing mines for the purpose of extending operations at those mines: Jacobs Ranch Mine (2), Black Thunder Mine (3), North Antelope Rochelle Mine (5), Eagle Butte Mine (1), Antelope Mine (3), Buckskin Mine (1) and the former North Rochelle Mine(1). The 17th lease, the West Rocky Butte lease, was issued to the Northwestern Resources Company in 1992. They planned to start a new mine to recover the coal included in the Rocky Butte and West Rocky Butte leases. Caballo Coal Company, a subsidiary of Peabody Holding Company, Inc. and operator of the adjacent Caballo Mine, is now the lessee for the Rocky Butte and West Rocky Butte leases.

Pending Coal Leasing Applications and Other Proposed Projects in the Wyoming Powder River Basin

There are 12 pending maintenance lease applications in the Wyoming portion of the PRB, including the Eagle Butte West LBA Tract (Appendix 1 – Figure 1). The pending lease applications include approximately 4.4 billion tons of Federal coal. Sales are pending for the North Maysdorf and South Maysdorf LBA Tracts, adjacent to the Cordero Rojo Mine. In addition to the Maysdorf and Eagle Butte West LBAs, the pending coal lease applications and applicant mines are: Belle Ayr North (*Belle Ayr Mine*), West Antelope II (*Antelope Mine*), Hilight Field (*Black Thunder Mine*), West Hilight Field (*Black Thunder Mine*), West Coal Creek (*Coal Creek Mine*), Caballo West (*Caballo Mine*), Hay Creek II (*Buckskin Mine*), West Jacobs Ranch (*Jacobs Ranch Mine*), Maysdorf II (*Cordero Rojo Mine*), and Porcupine (*North Antelope Rochelle Mine*).

Oil and gas leasing and development have occurred and are occurring in this area in addition to the ongoing coal leasing and mining. Both conventional and coal bed natural gas (CBNG) wells have been drilled in and around the Eagle Butte Mine and the Eagle Butte West LBA area. Conventional and CBNG resources are currently being recovered from Federal and private oil and gas leases in the application area. Federal oil and gas lease ownership in the Eagle Butte West LBA area is described in Figure 3-19 and Table 3-10 of the final EIS. Table 3-10 was updated between the preparation of the draft and final EIS documents to identify changes in Federal lease ownership. Federal oil and gas lessees and private interests identified by the applicant were included on the mailing list for the *Eagle Butte West Coal Lease Application EIS*.

The EIS discusses conventional oil and gas development in and around the Eagle Butte West LBA Tract. The discussion includes a summary of the results of an analysis of the conventional oil and gas drilling that has occurred in the area, prepared by the BLM Wyoming Reservoir Management Group (WSO-RMG). The EIS identifies the status and location of four

conventional oil and gas wells within the BLM study area for the Eagle Butte West coal lease application (Figure 3-19). At the time the draft EIS analysis was prepared, none of those wells were capable of producing. Review of the Wyoming Oil and Gas Conservation Commission (WOGCC) well database as of September 2007 did not indicate the presence of any newly producing conventional oil and gas wells.

The EIS also discusses coal bed natural gas (CBNG) development in and around the Eagle Butte West LBA area, including a summary of an analysis of CBNG resources in the Eagle Butte West LBA Tract prepared by the BLM WSO-RMG. At the Eagle Butte Mine, there are two mineable coal seams, which are locally referred to as the Roland and Smith coal seams. The USGS refers to these coal beds as the Wyodak-Anderson zone. In this area, CBNG has been produced from the Wyodak-Anderson zone since the late 1980's. The WSO-RMG estimated that, as of 2000, the coal in the area of the Eagle Butte West LBA Tract had an average content of approximately about 6.3 standard cubic feet of CBNG per ton of coal and the estimated recoverable CBNG resource in the tract at that time would have ranged from approximately 1.1 to 1.5 billion cubic feet. The EIS identifies the status and location of CBNG wells within the BLM study area for the tract when the EIS was prepared (Figure 3-19). Review of the WOGCC well database as of September 2007 did not indicate the presence of additional producing CBNG wells.

There are several mechanisms that can be used to facilitate recovery of the conventional oil and gas and CBNG resources prior to mining if the Federal coal in the tract is leased now:

- BLM will attach a Multiple Mineral Development stipulation to the Federal coal lease which states that BLM has the authority to withhold approval of coal mining operations that would interfere with the development of mineral leases issued prior to the coal lease [see Appendix 2].
- Conventional oil and gas wells must be abandoned while mining and reclamation operations are in progress but could be recompleted or redrilled following mining, if the value of the remaining reserves would justify the expense of reestablishing production. There are currently no producing conventional oil and gas wells on this LBA tract. The analysis prepared by WSO-RMG indicates that there has been little conventional exploration and development in this area in recent years.
- BLM has a policy in place on CBNG-coal conflicts (BLM Instruction Memorandum No. 2006-153), which directs BLM decision-makers to optimize the recovery of both CBNG and conventional resources and ensure that the public receives a reasonable return. This memorandum offers royalty incentives to CBNG operators to accelerate production in order to recover the natural gas while simultaneously allowing uninterrupted coal mining operations. In addition, this memorandum also states that it is the policy of the BLM to encourage oil and gas and coal companies to resolve conflicts between themselves and, when requested, the BLM will assist in facilitating agreements between the companies.

- CBNG has been produced from the Wyodak Anderson coal zone (locally referred to as the Roland and Smith coal seams) in this area since the late-1980s. The analysis prepared by WSO-RMG suggests that CBNG resource in this zone has been substantially depleted in the vicinity of the tract, either by mining operations or by recovery from producing wells and that there are insufficient remaining reserves to support additional drilling. Mining of the Eagle Butte West LBA Tract would not be authorized until the coal lessee has a permit to mine that tract approved by the WDEQ/LQD and a MLA mining plan approved by the Secretary of the Interior. Before the MLA mining plan can be approved, BLM must approve a Resource Recovery and Protection Plan. Prior to approving the Resource Recovery and Protection Plan, BLM can review the status of CBNG and conventional oil and gas development on the tract and the mining sequence proposed by the coal lessee. The permit approval process generally takes the coal lessee several years, during which time CBNG resources can continue to be recovered.
- Prior to mining the Federal coal, the coal lessee can negotiate an agreement with owners and operators of existing oil and gas facilities on the tract, including owners and operators of oil and gas well and pipeline facilities, regarding removal of those facilities prior to mining.

Other proposed projects in the Wyoming PRB that have advanced to the planning, permitting, or construction stages and that would reasonably be expected to be completed in the foreseeable future include: the almost completed Wygen II and, potentially, the proposed Wygen III coal-fired power plants at the Black Hills Corporation energy complex near the Wyodak Mine site in Gillette, Wyoming; the Dry Fork Station coal-fired power plant proposed by Basin Electric Power Cooperative near the Dry Fork Mine, north of Gillette; the Two Elk coal-fired power plant proposed by the North American Power Group (NAPG), which would be located east of the Black Thunder Mine; and a railroad line from the PRB to Minnesota proposed by the Dakota, Minnesota, and Eastern Railroad Corporation (DM&E). In early September, 2007, Canadian Pacific Railway Ltd announced it is in the process of buying DM&E.

The proposed power plants and the DM&E railroad line and the ongoing and proposed oil and gas operations (including CBNG) are separate projects being developed independently of leasing the Eagle Butte West LBA Tract. If these other projects are developed as proposed and the Eagle Butte West lease application area is leased and mined as proposed, there would potentially be some overlap between the environmental and economic impacts of constructing and operating some of those projects and the environmental and economic impacts of mining the Eagle Butte West LBA Tract. The cumulative effects of all of these projects (the Wygen power plants, the Two Elk power plant, the Dry Fork Station power plant, the DM&E railroad, the ongoing and proposed oil and gas development and production, and the coal mining that would follow the leasing of Eagle Butte West lease application area and the other pending LBA tracts) are described in Chapter 4 of the *Eagle Butte West Coal Lease Application EIS*. The cumulative impact discussion in the EIS is based on the analyses done for the PRB Coal Review, which can

be viewed on the BLM website at:

http://www.blm.gov/wy/st/en/programs/energy/Coal_Resources/PRB_Coal/prbdocs.html.

DECISION

The decision is to select Alternative 1, as described in Chapter 2 of the *Eagle Butte West Coal Lease Application EIS*. Under Alternative 1, the Federal coal included in the Eagle Butte West LBA Tract, as modified by BLM, would be offered for lease at a competitive sealed-bid sale and a lease would be issued to the successful qualified high bidder, if the highest bid received at the sale meets or exceeds the FMV as determined by the BLM and if all other leasing requirements are met. The competitive lease sale will be held under the regulations found at 43 CFR Subpart 3422, Lease Sales. As described under Alternative 1 in the EIS, the Eagle Butte West LBA Tract (WYW155132), as modified by the BLM, includes 1,427.77 acres more or less and the BLM estimates that the tract contains approximately 255 million tons of mineable Federal coal resources in Campbell County, Wyoming.

This decision is in conformance with the *Approved Resource Management Plan for Public Lands Administered by the BLM Buffalo Field Office* (RMP), which was completed in 2001 and amended in 2003. I have incorporated by reference in this decision standard coal lease stipulations addressing compliance with basic requirements of the environmental statutes and have attached BLM special stipulations (Appendix 2).

In the event that the bid or bids submitted at the competitive lease sale of the Eagle Butte West LBA Tract do not meet or exceed the FMV as determined by the BLM, the BLM may schedule a follow-up sale.

Under Alternative 1, it is assumed that the applicant will be the successful bidder on the Eagle Butte West LBA Tract and that the coal will be mined, processed and sold by the Eagle Butte Mine. If the tract is mined, it would be environmentally preferable to mine and reclaim the Eagle Butte West LBA Tract as a maintenance lease in a logical sequence with the ongoing mining and reclamation operations at an adjacent existing mine. This would be consistent with the analysis of the impacts described in the EIS.

REASONS FOR THE DECISION

The BLM decision to hold a lease sale for the Federal coal lands included in the Eagle Butte West LBA area is based on careful consideration of a number of factors, including:

- The decision to offer the Eagle Butte West LBA Tract (1,427.77 acres containing approximately 255 million tons of mineable Federal coal reserves), in response to the coal lease application received on December 28, 2001, is in conformance with the BLM

land use plan covering this area (See Conformance with Existing Land Use Plans Section, below).

- The *Eagle Butte West Coal Lease Application EIS* was prepared in response to an application BLM received to lease a tract of Federal coal to an existing mine in Wyoming. The environmental impacts of this decision were fully disclosed in that EIS. Public comment was addressed in the Final EIS.
- The Eagle Butte Mine applied for the Eagle Butte West LBA Tract in order to acquire access to a continuing supply of low sulphur compliance coal that would be sold to power plants for the purpose of generating power. Continued leasing of the low sulphur PRB coal enables coal-fired power plants to meet Clean Air Act requirements without constructing new power plants, revamping existing plants, or switching to other alternative fuels. Generally, the costs of constructing new power plants, retrofitting or revamping existing plants, or re-tooling and switching to other alternative fuels effect additional costs to energy customers.
- The BLM's preferred tract configuration under Alternative 1 provides for maximum economic recovery of the coal resource.
- When an application to lease Federal coal is submitted, the BLM must decide whether to process the application and hold a competitive sealed-bid lease sale for the coal or reject the application and not offer the coal for lease. Regardless of the decision, the BLM must notify the applicant in a timely fashion of its decision. The EIS provides the BLM with the information needed to meet its obligations to respond to an application in a timely fashion.
- A primary goal of the National Energy Policy is to add energy supplies from diverse sources including domestic oil, gas, and coal in addition to hydropower and nuclear power. The BLM recognizes that the continued extraction of coal is essential to continue to meet the nation's demands for energy. As a result, private development of Federal coal reserves is integral to the BLM coal leasing programs under the authorities of the Mineral Leasing Act of 1920, the Federal Land Policy and Management Act of 1976 (FLPMA) and the Federal Coal Leasing Amendments Act of 1976 (FCLAA).
- The BLM coal leasing program encourages the development of domestic coal reserves and reduction of the United States' dependence on foreign sources of energy. The leasing and subsequent mining of Federal coal reserves provide the United States, the State of Wyoming, and affected counties with income in the form of lease bonus payments, lease royalty payments, and tax payments. Production of Federal coal also provides the public with a supply of cost-efficient, low sulphur coal for power generation. The alternative selected meets the goals of the National Energy Policy and achieves the objectives of the Federal coal leasing programs managed by the BLM.

Federal coal leasing is supported by the Wyoming Governor, the Wyoming legislature, and other state and local officials.

- The U.S. Fish and Wildlife Service has provided written concurrence for leasing the Eagle Butte West LBA Tract pursuant to section 7(a)(2) of the Endangered Species Act of 1973, as amended (Appendix 3).
- Consultation with the appropriate Native American tribes was initiated in June of 2007. One tribe requested additional information on the cultural sites surveyed on the tract. BLM is continuing to correspond with this tribe regarding their request. No sites were recommended as eligible to the National Register based on testing and evaluation, and none of the sites have associations or characteristics of Traditional Cultural Properties National Historic Preservation Act consultation with the Wyoming State Historic Preservation Office will be completed as required during the permitting process, prior to any disturbance of the tract.
- Coal-fired power plant emissions include greenhouse gases, which contribute to global warming, and mercury, which can have adverse health effects to both humans and other animals. If the Federal coal included in the Eagle Butte West LBA Tract is leased, mined at currently permitted levels, and used to generate electricity by a coal-fired power plant, the emissions of greenhouse gases and mercury attributable to the Eagle Butte Mine would be extended for seven to ten additional years at approximately current levels. Issuing a Federal coal lease for the Eagle Butte West LBA Tract would not result in the creation of new sources of anthropomorphic greenhouse gas or mercury emissions and the rates of anthropomorphic greenhouse gas or mercury emissions would not be expected to increase.

PUBLIC INVOLVEMENT

BLM received the Eagle Butte West coal lease application on December 28, 2001. On April 29, 2002, the BLM published notice of the receipt of this lease application in the *Federal Register*. Copies of this notice were sent to voting and non-voting members of the Powder River Regional Coal Team (PRRCT), including the governors of Wyoming and Montana, the Northern Cheyenne Tribe, the Crow Tribe, Forest Service, OSM, U.S. Fish & Wildlife Service, U.S. National Park Service, U.S. Geological Survey, and others.

On May 30, 2002 and April 27, 2005, the PRRCT reviewed the Eagle Butte West coal lease application at public meetings held in Casper and Gillette, Wyoming, respectively. The PRRCT recommended that the BLM process the application. The BLM published a Notice of Intent to Prepare an EIS and a Notice of Scoping in the *Federal Register* on May 2, 2005. Scoping notices were mailed to Federal, State and Local government agencies, conservation groups, commodity groups, and individuals who could be impacted by this LBA in April 2005. The mailing list was jointly developed by BLM and the applicant. On May 17, 2005, a public

scoping meeting was held in Gillette, Wyoming. The scoping period extended through August 1, 2005.

The *Draft Eagle Butte West Coal Lease Application EIS* was mailed to the public and other interested parties in October of 2006. On October 20, 2006, the Environmental Protection Agency (EPA) published its Notice of Availability of the Draft EIS in the *Federal Register*. BLM's Notice of Availability and Notice of Public Hearing were also published in the *Federal Register* on October 20, 2006. The 60-day review and comment period on the Draft EIS started on October 20, 2006, with the publication of the EPA's Notice of Availability in the *Federal Register*, and ended on December 19, 2006. A formal public hearing was held on November 14, 2006, in Gillette, Wyoming, to solicit public comment on the Draft EIS, the proposed lease sale, and the FMV and MER of the Federal coal included in the tract. The Final EIS was mailed to the public and other interested parties in August 2007. The EPA and BLM both published a Notice of Availability of the Final EIS in the *Federal Register* on August 31, 2007. The availability period for the final EIS ended October 1, 2007.

During the EIS scoping period the BLM received written, e-mailed, and telephoned-in comments from 16 entities. The BLM received eight written comments on the Draft EIS. They are included, with responses, as Appendix I of the Final EIS. The applicant and one member of the public made formal statements at the public hearing on November 14, 2006. Comments were received from two entities on the Final EIS. Those comments are summarized, with BLM responses, in Appendix 4. The written comments and the transcript of the formal hearing are on file at the BLM Casper Field Office and BLM Wyoming State Office, Cheyenne, Wyoming. All comments that were received during the EIS process were considered in the preparation of the Draft and Final EIS documents and in this Record of Decision.

ALTERNATIVES ANALYZED IN DETAIL

The EIS analyzes three alternatives for the Eagle Butte West LBA Tract in detail: the Proposed Action, Alternative 1 (the Selected Alternative) and Alternative 2 (the No Action Alternative). These alternatives are summarized below. A full description of each of the alternatives analyzed in detail may be found in Chapter 2 of the EIS.

Proposed Action: Hold a Competitive Sale of Federal Coal Lands as Applied For

Under the Proposed Action, the lands that were applied for in the Eagle Butte West LBA Tract would have been offered for lease at a competitive sealed-bid sale. As applied for, the tract includes approximately 1,397.64 acres, more or less (see Appendix 1 - Figure 2). The applicant estimates that it includes approximately 238 million tons of mineable Federal coal. This alternative assumes that the applicant would be the successful bidder on the Eagle Butte West LBA Tract and that the coal would be mined, processed and sold by the Eagle Butte Mine.

Alternative 1 (Selected Alternative): Hold a Competitive Sale for a Tract As Modified by BLM to Allow for More Efficient Recovery of the Federal Coal in This Area

In reviewing the Eagle Butte West coal lease application, BLM identified a study area, which includes that tract as applied for and approximately 974.91 acres of unleased Federal coal adjacent to the northern and southern edges of the tract as applied for (Appendix 1 - Figure 2). In delineating the study area, BLM wanted to evaluate whether adding additional unleased Federal coal to the tract as applied for would potentially increase competitive interest in the tract, allow for more efficient recovery of the Federal coal in this area, or reduce the likelihood that some of the remaining unleased Federal coal in this area would be bypassed in the future.

The Final EIS identifies BLM's preferred tract configuration for the Eagle Butte West coal lease application. BLM's preferred tract configuration is to add a portion of the study area, approximately 30.13 acres, to the tract as applied for in order to allow for more efficient recovery of the Federal coal (Appendix 1 - Figure 3). Under the Selected Alternative, the Federal coal included in the Eagle Butte West LBA Tract under BLM's preferred tract configuration will be offered for lease at a competitive sealed-bid sale.

Under the Selected Alternative, the Eagle Butte West LBA Tract includes approximately 1,427.77 acres. BLM estimates that the modified tract contains approximately 255 million tons of mineable coal.

Table 1: Description of lands to be offered for competitive sale under Alternative 1

The legal description of the Eagle Butte West LBA Tract under the BLM's Selected Alternative is:

T.51N., R.72W., 6th P.M., Campbell County, Wyoming

Section 19:	Lots 13, 14, 19, and 20	187.79 acres
Section 20:	Lots 10(NW ¹ / ₄ , S ¹ / ₂), 11 through 15	231.87 acres
Section 29:	Lots 1(W ¹ / ₂), 2 through 7, 8(W ¹ / ₂ , SE ¹ / ₄), and 9 through 16	635.45 acres
Section 30:	Lots 5, 6, 11 through 14, 19, and 20	372.66 acres
Total:		<u>1,427.77 acres</u>

The land description and acreage are based on the BLM Status of Public Domain Land and Mineral Titles approved Coal Plat as of April 4, 2005. The coal estate in the tract described above is Federal and the surface estate is owned by FCW.

The Selected Alternative for the Eagle Butte West LBA Tract assumes that the applicant would be the successful bidder on the tract if a lease sale is held and that the tract would be mined as a

maintenance lease for the Eagle Butte Mine. There are no other active coal mines adjacent to the Eagle Butte West LBA Tract.

Alternative 2: Reject the Application (No Action Alternative)

Under the No Action Alternative, the application to lease the Federal coal included in the Eagle Butte West LBA Tract would have been rejected and the tract would not have been offered for lease at this time. Currently permitted mining activity at the adjacent Eagle Butte Mine will continue, with or without leasing the Eagle Butte West LBA Tract. Assuming that this tract would never be leased and coal removal and the associated disturbance would never occur, this alternative would be the environmentally preferable alternative. However, selection of this alternative would not preclude future applications to lease all or part of the Federal coal included in this tract.

ALTERNATIVES CONSIDERED BUT NOT ANALYZED IN DETAIL

Further descriptions of these alternatives may be found in Chapter 2 of the Final EIS.

Alternative 3

As under the Proposed Action, BLM would have held a competitive coal lease sale for the tract as applied for and issued a lease to the successful bidder. This alternative assumed that the applicant would not be the successful bidder, and that the Federal coal would be developed as a new stand-alone mine. BLM estimates that 500 to 600 million tons of coal would be needed to attract a buyer interested in constructing a new mine in the Wyoming PRB. This alternative was considered and eliminated from detailed study because the current economics of mining in the Powder River Federal Coal Region appear to make it economically unfeasible to construct a new mine to recover the Federal coal included in the Eagle Butte West LBA Tract, which includes approximately 255 million tons of mineable coal under BLM's preferred tract configuration.

Alternative 4

Under Alternative 4, the BLM would have postponed a sale of the Eagle Butte West LBA Tract to potentially increase the benefits to the public if coal prices increase within the PRB or to allow recovery of additional CBNG resources in the tract prior to mining.

This alternative was not analyzed in detail because it would not produce significantly different impacts than other alternatives analyzed in detail. Royalty and tax payments are collected at the time the coal is sold. They increase as coal prices increase, which allows the United States to benefit if coal prices have increased by the time of mining. Conventional oil and gas production and distribution facilities on the tract have to be removed prior to mining, but mining would not disturb any conventional oil and gas reservoirs that are located within the tract because they lie

below the coal. Economically recoverable conventional oil and gas resources in those reservoirs could be recovered after the coal is mined and the tract is reclaimed. Recovery of CBNG resources on the tract is occurring and, as discussed in the Background section above, the analysis prepared by WSO-RMG suggests that most of the economically recoverable CBNG resources in the vicinity of the tract have been recovered from the Wyodak-Anderson zone and that there are insufficient remaining reserves to support additional drilling. The environmental impacts of mining the Federal coal at a later time as part of an existing mine would be expected to be similar and about equal to the Proposed Action. If a new mine start is required to recover the coal in this tract, the environmental impacts would be expected to be greater than if the tract is mined as an extension of an existing mine.

CONFORMANCE WITH EXISTING LAND USE PLANS

Under the requirements of FCLAA, lands that are being considered for Federal coal leasing must be included in a comprehensive land use plan and leasing decisions must be compatible with that plan. The BLM *Approved Resource Management Plan for Public Lands Administered by the Bureau of Land Management Buffalo Field Office* (BLM 2001a) [an update of the *Buffalo Resource Area Resource Management Plan* (BLM 1985)] governs and addresses the leasing of Federal coal in Campbell County.

The major land use planning decision that BLM must make concerning the Federal coal resources is a determination of which Federal coal lands are acceptable for further consideration for leasing. The four screening procedures used to identify these coal lands require BLM to:

- estimate development potential of the coal lands;
- apply the unsuitability criteria listed in the regulations at 43 CFR 3461;
- make multiple land use decisions that eliminate Federal coal deposits from consideration for leasing to protect other resource values; and
- consult with surface owners who meet the criteria defined in the regulations at 43 CFR 3400.0-5 (gg) (1) and (2).

Under the first coal screening procedure, a coal tract must be located within an area that has been determined to have coal development potential [43 CFR 3420.1-4(e) (1)]. The Eagle Butte West coal lease application is within the area identified as having coal development potential by the BLM in the coal screening analyses published in the 2001 BLM Buffalo Field Office planning document.

The second coal screening procedure requires the application of the unsuitability criteria listed in the regulations at 43 CFR 3461. These coal mining unsuitability criteria were applied to high to moderate coal development potential lands in the Wyoming PRB, including the Eagle Butte West LBA Tract and surrounding lands during the coal screening conducted for the 2001 BLM Buffalo Office RMP update. No lands included in the Eagle Butte West LBA Tract were found to be unsuitable for mining during the application of the unsuitability criteria for the 2001 RMP update;

however, site-specific unsuitability determinations for some criteria were deferred until an application to lease was filed.

Unsuitability Criterion Number 3 states that lands within 100 ft of the outside line of the right of way (ROW) of a public road shall be considered unsuitable for surface coal mining, with certain exceptions. One of the exceptions allows surface coal mining in the ROW and buffer zone for a public road if the regulatory authority (or the appropriate public road authority designated by the regulatory authority) allows the public road to be relocated or closed after providing public notice and opportunity for a public hearing; and finding in writing that the interests of the affected public and landowners will be protected [30 CFR 761.11(d) and 43 CFR 3461.5(c) (2) (iii)].

A portion of U.S. Highway 14-16 and its ROW crosses the eastern edge of the Eagle Butte West LBA Tract under the Selected Alternative (Appendix 1, Figure 3). The 2001 BLM Buffalo RMP update deferred a decision on the unsuitability of the U.S. Highway 14-16 ROW and associated buffer zone until a leasing action was proposed. When the application was filed, FCW did not have approval from the appropriate public road authority (WYDOT) to relocate the road and the exception did not apply. As a result, BLM determined that the portion of the Eagle Butte West LBA Tract that includes U.S. Highway 14-16, its ROW, and a 100-ft buffer zone on either side of the ROW must be considered unsuitable for mining under Unsuitability Criterion Number 3 at that time.

During the preparation of the Eagle Butte West Coal Lease Application EIS, FCW and WYDOT were working on a proposal to relocate U.S. Highway 14-16 to allow recovery of the coal underlying the highway, the ROW and the buffer zone. In a letter to FCW, dated March 12, 2007, WYDOT accepted FCW's proposal to relocate US Highway 14-16 (Appendix 5). State Decision Document for the Foundation Coal West, Inc., Eagle Butte Mine Permit No. 428-T5-R3, Change No. 10 was signed by the Administrator of the WDEQ/LQD on August 2, 2007 (Appendix 5). It states:

“Public notice and opportunity for public hearing for the relocation of Highway 14/16 have been provided by WYDOT through notices in the Gillette News-Record published January 25, 2006, February 1, 5, and 6, 2006, and March 5, 2006. A Public Open House and Information Meeting was held in Gillette on February 7, 2006 followed by a 30-day public comment period. Based on this information, the LQD Administrator determined that adequate public notice and an opportunity for public hearing were provided by WYDOT as the authority with jurisdiction over the public Highway, and the required written finding has been made determining that the interests of the public and the affected landowners will be protected from the proposed operation as per LQD Rules and Regulations Chapter 12, Section 1(a)(v)(D).”

Based on these actions by WYDOT and WDEQ/LQD, BLM considers that the exception to Unsuitability Criterion Number 3 is now applicable and determines that the Federal coal underlying U.S. Highway 14-16, its ROW, and the associated 100-foot buffer zone are not now considered to be unsuitable for mining under the regulations at 43 CFR 3461.5(c) (2) (iii). Therefore, there are no unsuitability findings for the Eagle Butte West LBA Tract under the BLM's Selected Alternative.

The third coal screening procedure, a multiple land use conflict analysis, must be completed to identify and “eliminate additional coal deposits from further consideration for leasing to protect resource values of a locally important or unique nature not included in the unsuitability criteria”, in accordance with 43 CFR 3420.1-4(e)(3). The 2001 Buffalo RMP update addresses two types of multiple land use conflicts: municipal/residential conflicts and multiple mineral development (coal versus oil and gas) conflicts.

The municipal/residential multiple land use conflict was addressed by applying buffers around the municipal planning boundaries for the major municipalities within the BLM Buffalo Field Office area, including Gillette. The Gillette Buffer Zone, which extends three miles beyond the City of Gillette Planning District as shown in Figures 2 and 3 of Appendix 1, was established at the request of the city in 1979. The BLM Buffalo RMP (1985) included a provision that prohibited new coal leasing within the Gillette Buffer Zone.

At the time the Gillette Buffer Zone was established, there were several coal leases associated with existing approved coal mining operations located within its northern and eastern boundaries, and those mines were allowed to continue operations within the buffer zone. The Buffalo RMP was amended in 1988 to allow lease modifications, exchanges, and emergency coal leasing within the Gillette Buffer Zone in situations where coal adjacent to existing mines would be bypassed if coal leasing was not allowed within the buffer zone, and where coal leasing would not conflict with city planning. These leasing actions cannot extend more than one mile beyond the existing coal lease boundaries. The RMP amendment also specified that, before any new coal is leased within the buffer zone, the coal screening process, including application of the coal unsuitability criteria, would be conducted and the Gillette City Council would be consulted. On August 17, 1993, the manager of the BLM Buffalo Field Office approved a change to the Buffalo RMP that added LBAs to the types of leasing actions that can be considered within the Gillette Buffer Zone. The BLM Buffalo RMP update (2001) carried these changes forward.

The additional area evaluated by BLM under Alternative 1, shown in Appendix 1 - Figure 2, extended into the Gillette Buffer Zone. The BLM’s preferred tract delineation, shown in Appendix 1 - Figure 3, does not extend into the Gillette Buffer Zone.

BLM’s evaluation of the multiple mineral development conflicts related to issuing a lease for the Eagle Butte West LBA Tract are discussed in Pending Coal Leasing Applications and Other Proposed Projects in the Wyoming Powder River Basin section, above.

The fourth coal screening procedure requires consultation with surface owners who meet the criteria defined in the regulations at 43 CFR 3400.0-5 (gg) (1) and (2). The surface of the Eagle Butte West LBA Tract under BLM’s preferred tract configuration is owned by FCW, and FCW does not meet the qualified surface owner criteria, as defined in the regulations.

In summary, the lands in the Eagle Butte West LBA have been subjected to the four coal planning screens and determined to be acceptable for further consideration for leasing. Thus, a decision to lease the Federal coal lands in this application would be in conformance with the current BLM Buffalo RMP

MITIGATION, COMPLIANCE AND MONITORING

If the Eagle Butte West LBA Tract is leased, the lease will contain the standard coal lease stipulations. The attached BLM Special Stipulations (Appendix 2) regarding cultural resources, paleontological resources, threatened and endangered species, multiple mineral development of oil and gas or coal resources or both, resource recovery and protection, and public land survey will be added to the lease.


After a Federal coal lease is issued, SMCRA gives the OSM authority to administer programs that regulate surface coal mining operations. The WDEQ regulates surface coal mining activities in Wyoming. If the Eagle Butte Mine is the successful, qualified high bidder for the Federal coal included in the Eagle Butte West LBA Tract (WYW155132), a permit revision must be approved by the WDEQ/LQD and a MLA mining plan revision must be approved by the Assistant Secretary of the Interior before the coal in the tract can be mined. The existing mitigation measures specific to the currently approved mine plan for the adjacent mine will be revised to include mitigation measures specific to mining WYW 155132 when the mining permit is amended.

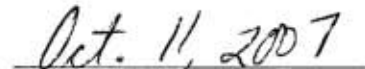
If the successful, qualified high bidder for the Federal coal included in the Eagle Butte West LBA Tract does not operate an adjacent mine and proposes to construct and operate a new mine in order to recover the Federal coal reserves, then a new permit application package must be submitted to and approved by WDEQ/LQD and a new MLA mining plan must be approved by the Assistant Secretary of the Interior before WYW155132 can be mined. The approved permit would include mitigation measures and monitoring plans specific to mining the newly leased tract.

Prior to mining of the areas subject to the coal lease, all practicable means to avoid or minimize environmental harm will be adopted as leasing stipulations or, as consistent with normal practices, can be expected to be adopted as conditions of the mining permit. To ensure that the revised plan is in compliance with the leasing stipulations, BLM has a responsibility to review the Resource Recovery and Protection Plan (R2P2) prior to approval of the mining plan. Before any mining operations can begin on the Eagle Butte West LBA Tract, a R2P2 applicable to the tract must be approved by the BLM, a permit or permit revision must be approved by WDEQ/LQD, and a MLA mining plan or plan revision must be approved by the Assistant Secretary of the Interior.

RECOMMENDATION

I recommend that, after a competitive lease sale is held, Federal coal tract WYW155132, with its associated 1,427.77 acres more or less be issued to the successful, qualified high bidder, provided it is determined that the highest bid at the sale meets or exceeds the FMV of the tract as determined by the BLM and that all other leasing requirements are met. This is Alternative 1, offering a tract as modified by BLM, as described in this record of decision. The competitive lease sale will be held in accordance with the requirements at 43 CFR Subpart 3422. The lease will be subject to the attached BLM special lease stipulations (Appendix 2)


Assistant Field Manager for Solid Minerals (Acting)
Casper Field Office


Date

APPROVAL

I agree with the recommendation of the Assistant Field Manager for Solid Minerals and I approve the decision to offer Federal coal tract WYW155132 for competitive lease sale.


BLM Wyoming State Director

10/18/07
Date

APPEAL OF STATE DIRECTOR DECISION

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR Subpart 4 and the enclosed form 1842-1 (Appendix 6). If an appeal is filed, your notice of appeal must be filed in this office (BLM, Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003) within thirty (30) days from the date BLM published the Notice of Availability (NOA) of this Record of Decision in the *Federal Register*. BLM expects that the NOA will be published (*insert date when known*). The appellant has the burden of showing that the decision appealed is in error.

If you wish to file a petition (request) pursuant to regulation 43 CFR 4.21(a)(2) for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standard for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for stay of a decision pending appeal shall show sufficient justification based on the following standards:

- 1) The relative harm to the parties if a stay is granted or denied;
- 2) The likelihood of the appellant's success on the merits;
- 3) The likelihood of immediate and irreparable harm if the stay is not granted; and
- 4) Whether the public interest favors granting a stay.

- Appendix 1. Figures 1, 2, and 3
- Appendix 2. BLM Special Coal Lease Stipulations for the Eagle Butte West Federal Coal Lease Tract (WYW155132)
- Appendix 3. Responses Concurrence letter from the U.S. Fish and Wildlife Service
- Appendix 4. Public Comments on the Final EIS and BLM
- Appendix 5. U.S. Highway 14-16 Relocation Documents
- Appendix 6: Appeal Procedures